

FILED

Harrison v. U.S. Parole Commission, No. 02-35457

JUN 16 2003

WALLACE, Senior Circuit Judge, concurring:

CATHY A. CATTERSON

U.S. COURT OF APPEALS

I join the majority decision, but I write separately to clarify the record.

Harrison did not raise the issue of assaultive behavior in his habeas petition, but we may nonetheless review it under United States v. Allen, 157 F.3d 661, 667 (9th Cir. 1998). Harrison did not raise the double-counting issue to the National Appeals Board. The Commission had an opportunity to object in the district court on exhaustion grounds, but failed to. The exhaustion argument is thus waived.